

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TRAVIS BARTHEL,	:	4:16-cv-04176-LLP
Plaintiff,	:	
vs.	:	ANSWER AND
	:	DEMAND FOR JURY TRIAL
COBRA ENTERPRISES OF UTAH, INC.,	:	
Defendant.	:	
	:	

Defendant Cobra Enterprises of Utah, Inc., for its Answer to Plaintiff's Complaint, states and alleges as follows:

FIRST DEFENSE

1. Said Complaint fails to state a claim or a cause of action against Defendant upon which relief can be granted.

SECOND DEFENSE

2. Defendant denies each and every allegation, matter, and thing contained in said Complaint except such as are hereinafter specifically admitted or qualified.

3. Paragraphs 3, 29, 30, 31, 32, 33, 34, 35, and 48 of Plaintiff's Complaint contain legal conclusions to which no response is required.

4. Defendant is without sufficient information to admit or deny Plaintiff's allegations in paragraphs 1, 4, 5, 6, 7, 12, 13, 24, 25, 26, 27, 40, 41, and 43 of Plaintiff's Complaint.

5. Defendant admits paragraphs 2, 18, 44, 46, and 50 of Plaintiff's Complaint.

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6. As to paragraph 8, admit that Cobra Enterprises Associates, Inc., was formed in 2001.

7. As to paragraphs 9 and 10, admit that Cobra Enterprises Associates, Inc., purchased equipment previously owned by Industries.

8. As to paragraph 11, admit that there are cosmetic similarities between the Cobra Derringer model and the Davis Derringer model.

9. As to paragraph 14, admit that the Cobra Derringer has no trigger guard.

10. As to paragraphs 16 and 17, when the operator places the hammer directly on the firing pin as opposed to the half-cocked position, external pressure or jarring, depending upon the degree, can initiate firing of the gun.

11. As to paragraph 20, if the hammer is released the gun may fire depending on the circumstances.

12. As to paragraph 23, if the operator follows the instructions in the manual, it is not hazardous to the operator.

13. As to paragraph 28, Defendant incorporates by reference its preceding responses to the allegations as if fully set forth herein.

14. As to paragraphs 41 through 47, Cobra acted reasonably in employing an active safety mechanism.

15. As to paragraph 52, admit that an incident occurred and that Plaintiff was injured as a result, but specifically deny that Defendant proximately caused Plaintiff's injuries and

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further deny that Plaintiff was injured or damaged in the amount and to the extent alleged.

Defendant remits Plaintiff to his strict proof thereof as to be decided by a jury.

16. As to paragraph 53, Defendant denies that Plaintiff is entitled to punitive damages.

AFFIRMATIVE DEFENSES

17. Plaintiff was contributorily negligent more than slight, barring recovery herein.

18. Plaintiff's claim is barred by the doctrine of assumption of the risk.

19. Plaintiff's claim is barred by the doctrine of misuse.

20. Plaintiff's claim for punitive damages violates Defendant's due process right guaranteed by the Fourteenth Amendment to the United States Constitution and Article 6, Section 2 of the South Dakota Constitution.

WHEREFORE, Defendant prays that the Plaintiff's Complaint be dismissed upon the merits and that Defendant have and recover its reasonable attorney's fees, costs, and disbursements herein.

Dated this 17th day of March, 2017.

FULLER & WILLIAMSON, LLP

/s/ William Fuller

William Fuller
7521 S. Louise Avenue
Sioux Falls, SD 57108
Phone 605-333-0003
Fax 605-333-0007
Email bfuller@fullerandwilliamson.com
Attorneys for Defendant

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DEFENDANT REQUESTS A TRIAL BY JURY ON ALL ISSUES OF FACT.

Certificate of Service

I certify that on the 17th day of March, 2017, I e-filed and served via CM/ECF Filer (PACER), a true and correct copy of the foregoing Answer and Demand for Jury Trial, upon:

Seamus W. Culhane
Nancy J. Turbak Berry
Turbak Law Office, PC
seamus@turbaklaw.com
Nancy@turbaklaw.com

/s/ William Fuller
One of the Attorneys for Defendant